IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of Case

Special Appeal No. 72 of 2005

Date of decision: 27th October, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date:- Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Special Appeal No. 72 of 2005

1. Executive Engineer,
   Kumaon Jal Sansthan, Nainital.
2. Kumaon Jal Sansthan,
   Nainital.
   Through its General Manager. …… Appellants

Versus

1. Vinod Lal Sah S/o Sri Nand Lal Sah
   R/o Jhutiya, Tehsil & District Nainital.
2. Bhupal Singh Negi S/o Sri Surendra Singh Negi.
   R/o Chapar, Tehsil & District Nainital
3. Bhachi Singh S/o Sri Bhadur,
   R/o Mawara, Post Nathua Khan,
   Tehsil & District Nainital.
4. Harak Singh Bisht S/o Sri Dav Singh,
   R/o Lose Gayani, Post Nathua Khan,
   Tehsil & District Nainital. ….. Respondents

Mr. J.P. Joshi, Advocate for the appellants.
None for the respondents.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

RAJEEV GUPTA, C. J. (Oral)

The appellants have filed this Special Appeal against the impugned judgment dated 18.07.2005 passed in Writ Petition No. 4620 (S/S) of 2005.

2. The petitioners had filed the writ petition for the following reliefs:

> "(i) issue a writ order or direction in the nature of mandamus thereby directing the opp. parties to regularise the services of the petitioners on their posts and pay them the minimum of the pay scale as the other similarly situated persons are being paid from the date of their regularisation.

(ii) issue any other writ order or direction as this Hon'ble Court may deem just and proper.

(iii) allow the writ petition with cost."

3. The case of the writ petitioners was that they were engaged in 'Ramgar Pey Jal Yojana' as Beldar / Chowkidar during the period between 1985 to 1990. Later on, the petitioners' services were transferred to Kumaon Jal Sansthan. The petitioners' grievance was that in spite of their having served for a period of more than 10 years, neither their services were regularised nor they were being paid regular pay scale.

4. The appellants (respondents in the writ petition) filed their counter affidavit denying the writ petitioners' claim for regularisation. Paras 3 to 7 of the counter affidavit read as follows:

"3. That the contents of para no. 2 of the writ petition are not correct and as such are denied. The petitioners were not engaged as Daily Wagers in the department on the contrary they were engaged as part time workers on a fixed honorarium and as such neither they are entitled for minimum of pay scale nor they can claim for regularisation.

4. That in respect to the contents of para no. 3 of the writ petition, it is stated that petitioners are engaged as part time workers in the department and they were being paid honorarium for the work performed by them. The duty assigned to the petitioners is to open the valve of water distribution pipe line in the morning and to close the same in the evening which is a work of not more an hour per day for which they were being paid honorarium.

5. That in respect to the contents of para no. 4 of the writ petition, it is stated that it is true that Ramgar Pay Jal Yogna Project was transferred by the Jal Nigam to the Kumoun Jal Sansthan, however, it is denied that the petitioners were working under the said Yogna as the deponent has no knowledge of the same. So far the Kumoun Jal Sansthan is concerned, the petitioners were engaged as part time workers on a fixed honorarium basis.

6. That in respect to the contents of para nos. 5 & 6 of the writ petition it is stated that since the

> petitioners are part time worker there is no question of any action being taken against them.
>
> 7. That in respect to the contents of para no. 7 of the writ petition it is stated that the petitioners were engaged against no post in the department on the contrary, as already stated in the preceding paras of this counter affidavit, they were engaged as a part time workers in the department for one hour per day to open the valve of drinking water distribution pipe line and to close the same in the evening. Duty assigned to them is only for one hour per day and as such there is no question of their regularisation or payment of minimum of pay scale to them."

5. The learned Single Judge allowed the writ petition and directed the appellants to pay minimum of pay scale till the petitioners are regularised; if the vacancies are available, to consider the case of the petitioners for their regularisation as per seniority; if there is no post vacant at present, the future vacancy shall be first filled by these petitioners; and no fresh recruitment shall be made till the petitioners are regularised.

6. Mr. J.P. Joshi, the learned counsel for the appellants submitted that the directions contained in the impugned judgment run counter to the dictum of the Apex Court in the case of **Secretary, State of Karnataka & Others Vs. Umadevi & Others** reported in **2006 AIR SCW 1991.**

7. The writ petitioners have not filed any document along with their writ petition to establish that they were appointed after following the prescribed recruitment process against permanent posts. The appellants, in their counter affidavit, have categorically stated that the writ petitioners were engaged as part-time workers on fixed honorarium with the liberty of pursuing their other occupation, as their duty hours were limited to one hour per day only. Thus, the writ petitioners were appointed on part-time basis on fixed honorarium.

8. As the petitioners were engaged as part-time workers on fixed honorarium, they can neither claim regularisation of their services nor parity of pay scale with other regular employees. Our view is fortified by the judgment dated 14.09.2004 passed in Special Appeal No. 37 of 2004.

9. In this view of the matter, the impugned judgment is liable to be set aside.

10. For the foregoing reasons, the Special Appeal is allowed and the impugned judgment dated 18.07.2005 passed in Writ Petition No. 4620 of 2005 (S/S) is hereby set aside. Consequently, the writ petition fails and is hereby dismissed.

11. No order as costs.

(Rajesh Tandon, J.) **(Rajeev Gupta, C.J.)**
27.10.2006 27.10.2006

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